

APPROVED



ZONING BOARD OF APPEALS MEETING NOTICE/AGENDA AUGUST 25, 2016

(Posted in accordance with the provisions of MGL Ch. 39, Sec. 23A, as amended)

**Auditorium – 7:00 p.m.
62 Friend Street, Amesbury, MA 01913**

ATTENDANCE: Donna Collins, William Lavoie, Matt Vincent, Robert Orem, David Haraske

ABSENT: Matt Sherrill, Sharon McDermot, Denis Nadeau, Building Inspector/Zoning Compliance Officer
Also Susan Yeames, Recording Secretary
Transcriber of Minutes: Joan Baptiste

Vice Chair Donna Collins opens the meeting at 7:00 p.m.

MINUTES: July 28, 2016: Motion by Robert Orem to approve the minutes of July 28, 2016, second by Matt Vincent. AIF

ADMINISTRATIVE:

110 Kimball Road amend decision – zoning district error R40 to R80.

Motion by Matt Vincent to approve amendment to decision to be placed on file with City Clerk in the matter of 110 Kimball Road, Special Permit/Finding that was filed with the Zoning Board of Appeals, second by David Haraske. AIF

Request for a (6) six month extension of the Zoning Variance which was granted by ZBA on September 24, 2015 in connection with Emily A. Smedstad, Trustee of Thomas Nominee Trust, for the property at 23R Chester Street, Amesbury, MA. The request is made pursuant to the provisions of Massachusetts General Laws, Chapter 40A, Section 10.

Attorney Robert Deshaies, representing Emily Smedstad. Property is on the market, not yet under agreement. Some interest but nothing firm. They need more time.

Motion by Matt Vincent to grant a six month extension in the matter of Emily Smedstad, 23R Chester Street, second by Robert Orem. AIF

PUBLIC HEARING(S):

Helen R. Buia and Brian J. Buia are seeking a **SPECIAL PERMIT/FINDING** under the Amesbury Zoning By-laws, Section VI, Paragraph B “Table of Dimensional and Density Regulations” to tear down the existing single family house, deck, and other appurtenances and rebuild a new single family house and appurtenances in the same general location. The proposed structure will be located at 47 Merrimac Street, Amesbury, MA in an R-20 zoning district, precinct 1.

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Sitting on this case are William Lavoie, Matt Vincent, Robert Orem, Donna Collins, David Haraske.

Brian Buia, applicant for tear down and reconstruction of an existing single family home at 47 Merrimac Street.

David Haraske: How old is the house?

Brian Buia: Built in 1830 according to Assessors field card.

David Haraske: Have you spoken with the historical commission?

Brian Buia: No. We have met with Building Inspector and Conservation Commission. The house is in the process of being taken by the city to be torn down because of its condition. The building inspector didn't believe it was restorable.

David Haraske: It is required to be reviewed by historic, because it's more than 75 years old.

Donna Collins: We can make that a stipulation in the decision.

Robert Orem: Looking at the drawing that was submitted with your package. I can see where the dwelling is and there is an existing retaining wall and two proposed retaining walls but what does that look like in relationship to the existing building as far as location on the property.

Brian Buia: There is an existing retaining wall to the left of the house and there is one in the rear of the house. Our intention was to hold those existing wall lines and improve on the retaining walls. The footprint of the proposed house pretty much hits the same location as the existing house.

David Haraske: What's the height of those walls?

Brian Buia: Down by the street is three to four feet and on the side it's going to be stepped under three feet in the back.

David Haraske: Nothing engineered – just a common wall?

Brian Buia: Correct.

ABUTTER COMMENTS:

Susan Palino – 46 Merrimac Street: I was told by the building inspector that it was inhabitable not condemned. My main concern is the retaining wall along the front and what will happen in regards to drainage.

Brian Buia: The wall sits on the property. We are creating two parking spaces in front of the house and a two car garage under. We will turn the wall by the stairs and do a stone façade across the garage. On the right 30 feet from the stair opening to the right the wall will be cut and turned also. Visually from the street you will see the existing stone wall up to the stairs, the wall on the right cut and you'll see the same stone on the inside. Every effort will be made to save that stone to use on the side retaining walls. The street appearance will be stone. We will keep the existing grade in front of the house.

David Haraske: What are the current parking conditions?

Brian Buia: No permitted parking on the street. On Sweet's Hill there is a small bump out that's at the top of the hill. We proposed a two car garage under the living space and room for two parallel parking spaces on Merrimac Street for a total of 4 spaces.

David Weigel at 49 Merrimac Street direct abutter to the west. We are grateful that someone wants to buy and improve the property. We would like assurance that the retaining wall will not be compromised and that it will be engineered properly and secured properly for everyone's sake.

Motion by Matt Vincent to close and discuss, second by David Haraske. AIF.

Donna Collins: We will use a Finding worksheet for this.

SUMMARY OF FINDINGS

1. Does it predate zoning? – yes, 1830 on field card

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2. How is it nonconforming? – area, frontage, front and side yard setbacks.
3. Will the proposed project be more or less detrimental to the neighborhood? – less
4. Does it create any new nonconformity? – no

Motion by Robert Orem to close the public hearing and vote, second by William Lavoie.

Motion by Matt Vincent to approve the finding for 47 Merrimac Street subject to the following stipulation: Approval of plans by the building inspector for construction relating to those portions of the retaining wall on the property which directly abut public ways, second by Robert Orem.

VOTE

William Lavoie – yes
Matt Vincent – yes
Robert Orem – yes
Donna Collins – yes
David Haraske - yes

William Larsen and Janice Lapierre are seeking a **VARIANCE** under Amesbury Zoning Bylaws, Sections IX.B Nonconforming uses, Structures, and Lots; Extension and Alteration and Section X.I Administration and Enforcement; Variances. The applicants are seeking relief from lot width, lot area and frontage requirements to convert a single family home to a two-family home.

The applicants are also seeking a **SPECIAL PERMIT/FINDING** under the Amesbury Zoning Bylaws, Section XI.K.1 Residential Conversions and Section X.J Special Permits to allow a two family use within existing building envelope. The property is located at **6 Ellison Street**, Amesbury, MA in an R-8 zoning district, precinct 3.

Sitting on this case are Matt Vincent, Robert Orem, Donna Collins, Sharon McDermot, David Haraske.

Mark Griffin, Attorney in Newburyport representing Mr. Larsen and Ms. Lapierre:

We are here for a special permit to convert a single family to a two family and also a Variance for lot width, frontage and lot area.

This property was bank owned and it's been vacant for approximately 5 years. It is in distress and needs a significant amount of work. The applicants purchased the property under the misapprehension that it could be utilized as a two family home if and when it was brought up to the building code. They did see that it was classified as a single family on the assessor's card and they did speak with the building commissioner about it. As a result they came to learn that in fact they needed this conversion special permit and also the variance, because the property, even though it had the two units there was not necessarily any evidence in the building department records that it was a legal two family. There are quite a few records that were turned over by the building dept. which seem to indicate that at some point there were renovations to the property which may have been the conversion to the two family back then but unfortunately the records are so vague that it can't be definitely discerned as to whether the two family permit was granted. This home was built in 1890 according to assessor's card so it is preexisting nonconforming with respect to all of its current nonconformities. With respect to the renovations, had it in fact been converted to a two family pursuant to a building permit previously, the statute of limitations for enforcement would have run at this point and the applicants would be able to actually proceed merely with a building permit. (Mr. Griffin steps away from microphone and hands out material to board members). ...from the realtor is that the property has been in use as a two family for at least 20 years. As you can see from the

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permit document, it does indicate that a renovation of the second floor was being done in 1985. It also indicates on that form that plumbing and electrical were part of that renovation. Unfortunately it doesn't give details of the actual renovation as to whether they were including a separate and distinct dwelling unit. That being said, we have to treat it as a single family and that's why we're here. We have to proceed under the two family conversions for properties in the R8 district. Requirements are that the lot area must be 12,000 sf. This property does not meet that with 10,364 sf. Renovations will be made within the existing building envelope. It has frontage on two streets although not meeting the requirement on either. We will be able to provide 4 parking spaces. With respect to the special permit criteria, the proposed use is two family: It is allowed in the R8 zoning district, it is desirable and essential to the public convenience and welfare. This will be a benefit to the public, if approved. The use will not create any undue traffic or pedestrian hazard. The use is proposed to be consistent with the way it was used previously before the property was vacant. It will not overload any municipal systems. The special regulations are set forth in the two family conversion section of the ordinance. The use is not going to impair the integrity or the character of the district especially where the R8 zoning district is primarily intended to provide for residential uses with single family uses allowed by right and two and three family by special permit. The project won't cause an excess of the use that could be detrimental to the neighborhood. The houses that actually share a property line with this property are all classified on assessor cards as single family. With respect to the variances that are requested the applicant's has intended to reside in this property as their own home in one of the units – there would be a unit on each floor. Owner will live in one unit and rent out the other floor. The financial hardship would be substantial based on what their interests were when they came into this transaction to buy the property. The property is not nearly as financially viable to them as it would have been as a two family were it to stay as a single family. The shape of the lot is unusual (long and narrow) and is preexisting with respect to lot frontage. As a result of its narrowness the lot frontage is insufficient and it is unique because it has frontage on two streets. The narrowness of the lot also contributes to the need for lot width relief as well as the frontage. Since it has preexisting nonconforming lot area, frontage and lot width the dimensional requirements can't be met for the conversion of the two-family and thus the variance is required. The relief that we're asking for can be sought without substantial detriment to the public good and in fact, I would submit that it's just the opposite. The public will benefit. The rehabilitation of the building will be an improvement to the neighborhood by way of appearance. It will take cars off the street because the parking will be compliant. The impact of the project will be minimal because the use will be as it had been in the past. It is not contrary to the spirit or the intent of the bylaw. The applicants are going to lessen congestion and prevent blight by rehabilitation an entire property and providing additional off street parking all listed in the intent section of the Amesbury Zoning Bylaw.

David Haraske: Are you moving the building forward?

Mark Griffin: No. The building is staying where it is

Matt Vincent: Are you intending to raze the existing building?

Mark Griffin: No. They will rehab the interior and exterior siding. Possibly remove decks and staircases on the outside.

Matt Vincent: What is the need for the variance?

Mark Griffin: In order to receive the special permit, the variance is required. The lot is undersized for the two family.

David Haraske: Do you have any other evidence other than a building permit as to what is on record as a two family unit?

Mark Griffin: No the reason why we're here is because we can't prove that it's an existing legal two family. We are here to ask the board to approve the conversion of the building that has evidence that it was a two family. That was done many years ago. The current owner purchased the property in March 2016.

Sharon McDermot: Did they purchase it thinking it was a two family?

Mark Griffin: They purchased it thinking that they could use it as a two family once they brought it up to existing building code. They did less research than they should have.

ABUTTER COMMENTS:

John Ankowitz, 51 Powow Street which abuts 6 Ellison Street: We are generally in favor of this project. The house has been vacant for a very long period of time. Wildlife has been going in and out of the house. Question 1 is about parking.

Mark Griffin: They will be putting two parking spaces – front and back – on each side of the house.

John Ankowitz Question 2 as a two family home is there going to be owner-occupied

From audience (owner will live in one unit)

John Ankowitz: Each unit has how many bedrooms?

From audience: Two.

John Ankowitz: Timing of project. How long will it take?

Matt Vincent: Are you in favor of the project?

John Ankowitz: I am in favor as long as it's doable. The property is in bad shape.

John Digenero, 9 Ellison Street lived in neighborhood entire life: Confusion regarding two family or not. It's a single family always has been, the family that lived there previously put an addition on to the back of the house to increase the space for their current family. They remodeled the interior so their kids could stay when married. He had separate entrances. He blew out the back of the building to accommodate more bedrooms, put in another bathroom. But it's not a two family. The parking situation on paper what you don't see is the building to the east. His gas service is right where that driveway would be. So in the winter if you tried plowing that and anyone hit the gas service.... As far as no extra traffic on the street....the reality is when they lived thereif it's just 4 cars – okay but when friends come over they almost block my driveway. Ellison is an awkward street as far as the sidewalks to the east. The way you park on Ellison Street...you don't park on the street you park on the sidewalk. That should not be a two family. They say they'll live there but for how long. They could move out in a few years and rent both units. Then who will police the tenants? I think there would be an impact on the neighborhood. If they bought the house as a single family, then use it that way. Not in favor of conversion.

Elise Matyja, 8 Allston Street: One of main concerns is the limited parking on Ellison. Allston is extremely narrow. Main concern if parking isn't granted, half of this driveway belongs to the abutter. If they can't park 4 cars by the house, I'm worried where it will go. The condition of the home, owner occupied is good, renovating is good but I worry about the type of renter the home may attract if it can not be brought up to something that is esthetically pleasing. It's a lot of work. It may not be owner occupied forever. Was it surveyed to allow parking?

From audience: Yes.

Elise Matyja: There's a lot of noise in the neighborhood.

Motion by Sharon McDermot to close and discuss, second by Robert Orem. AIF.

Donna Collins: We'll start with the variance.

The hardship is the long and narrow shape of a preexisting nonconforming lot.

It is due to the placement of the structure on the lot.

The feature does not generally affect the district.

It would not be a substantial detriment to the public good if granted.

The petition does not derogate from the intent of the bylaw.

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Motion by Matt Vincent to approve the variance for 6 Ellison Street due to the preexisting non-conforming lot, second by Sharon McDermot.

VOTE

Matt Vincent – yes

Robert Orem – yes

Donna Collins – yes

Sharon McDermot – yes

David Haraske – yes

Five in favor. The Variance is approved.

SPECIAL PERMIT

Conditions of conversion from single family to two family.

1. In no instance shall the lot be less than 12,000 sf.
2. minimum lot frontage shall be a minimum of 80 feet in the R8 zone and not less than the required minimum in all other zones
3. There be at least a minimum off street parking for three vehicles
4. All other dimensional requirements of the zoning district on which the conversion is proposed are met
5. The maximum number of dwelling units allowed in any previously existing one family dwelling shall be two and two family dwelling shall be three.
6. In instances where the board of appeals is requested to permit three dwelling units in a residential structure, the board of appeals shall require a site plan that indicates off street parking for at least 5 vehicles and said plan shall indicate that no designated off street parking spaces are located in the required front yard set back of the zoning district in question.
7. For all conversions, all health and safety regulations of the city and commonwealth shall be met and a report to that affect shall be obtained by the applicant from the building inspector.
8. No applicant for a residential conversion special permit shall apply to the building inspector for a building permit or occupancy permit unless and until a special permit for conversion is approved by the board of appeals. Further all building permits and occupancy permits issued by the building inspector shall be in conformance with the conditions if any stipulated in the special permit approval.
9. All proposals for conversions are subject to the special permit requirements and procedures set forth in section X.J of this bylaw.

SUMMARY OF FINDINGS

1. Does the use currently exist in the table of uses? – Yes
2. Is it essential or desirable to public convenience and welfare? - Yes improvement of vacant property
3. Will it create undue traffic or impede pedestrian safety? – No
4. Will it overload the public system? - No
5. Special conditions: have they been satisfied? Yes - those are now met through the variance
6. Will it impair the character health or welfare of the district? No They are improving the house.
7. Will it create excessive use in the neighborhood? - No

Further discussion.

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Matt Vincent: The question is undue traffic or impede pedestrian safety as opposed to general safety. There are not changing the current structure. There will be visibility issues (due to tree) whether it's a two family or a single family.

Robert Orem: I don't think the square footage of the property is a real issue however the frontage requirement is an issue. There is a reason why there is a minimum lot frontage of at least 80 feet in an R8 zone.

David Haraske: There is only 50 feet frontage and split frontage on the other side which is not used as frontage.

Donna Collins: It's a house with 4 bedrooms – The size of house is not changing. It will not be excessive use.

Matt Vincent: I agree.

David Haraske: There is no evidence of this being a two family in the past. We granted a variance so it would be possible.

Matt Vincent: I think we should ignore the past.

David Haraske: You can't ignore the facts.

Matt Vincent: The facts are contested. It doesn't matter. If the comments about it being a two family in the past never came up, what would we decide about this application to convert a single family to a two family? The current condition of this house and the potential renovation...

David Haraske: I think it's great to see it but ...

Robert Orem: As I read the statute, I'm not sure if the requirements in that section are not met, (Section XI.K) whether we have authority to ... I think Matt stated it the right way, the house is existing it's not conforming. We approved those nonconformities as a single family house.

Matt Vincent: We made it eligible to be considered for conversion by way of the variance.

Robert Orem: That's what I'm questioning because the statute says we may grant permission for a one family to a two family in accordance with the following provisions and there are the provisions. So as you say we have a single family before us that doesn't meet those conditions.

David Haraske: That what I say...variance or not, they don't meet those requirements.

Donna Collins: We have granted two family conversions on undersized lots before. And most time a variance is included in the process. I wish Denis (Nadeau) was here.

David Haraske: This doesn't meet the requirement of a 12,000 square foot lot.

Atty. Mark Griffin : It was always our intent that the variance be for the conditions that are associated with this conversion permit (lot area, lot width and frontage requirements of the conditions of the two family conversion permit). If you look at the building inspectors permit denial, you will see that he wrote in that denial that the permit can't be granted until a variance is approve for those conditions.

Donna Collins: I agree. Are we ready to vote?

Motion by Sharon McDermot to vote on the two family conversion special permit for 6 Ellison Street, second by Robert Orem.

VOTE

Matt Vincent - yes

Robert Orem - yes

Donna Collins - yes

Sharon McDermot - yes

David Haraske - no

Motion carries 4 – 1. The Special Permit is approved.

Motion by Matt Vincent to adjourn at 9:00 pm, second by Sharon McDermot. AIF